

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

CC: INTL:B6

PLR-116578-08

Date:

November 25, 2008

Legend

Advisors	=
Taxpayer	=
Parent	=
State B	=
Business	=

Year 1	=
State A	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=

Dear

This responds to an April 7, 2008 letter ruling request submitted by Advisors on Taxpayer's behalf. The letter requested a ruling granting Taxpayer an extension of time under Treas. Reg. §§ 301.9100-1 and 301.9100-3 to file Form 4876-A (including the shareholder consent statements) in accordance with Temp. Treas. Reg. § 1.921-1T(b)(1).

The extension granted by this letter ruling is based on facts and representations submitted by Taxpayer and Advisors, and accompanied by penalty of perjury statements executed by Taxpayer and Advisors. This office has not verified the facts and representations submitted in support of the ruling request. Verification of the

information, representations, statements, and other data may be required as part of the audit process.

Facts

Parent is a State B corporation principally engaged in Business. In Year 1, Parent decided to establish an interest charge domestic international sales corporation ("IC-DISC") to sell its products on a commission basis. Parent hired Advisors to help it establish a domestic subsidiary that would elect IC-DISC status for federal income tax purposes. As part of this process, Taxpayer was incorporated in State A on Date 2. In addition, Advisors prepared the necessary documents for Taxpayer to elect to be treated as an IC-DISC. On Date 3, Advisors sent Taxpayer a package containing these documents for Taxpayer's signature and execution. Taxpayer mistakenly believed that once these documents were complete, all the requirements to conduct business and be treated as an IC-DISC for its first taxable year were satisfied. Accordingly, Taxpayer maintained its own bank account, and maintained separate books and records to record IC-DISC transactions starting Date 2. Taxpayer uses a taxable year accounting period ending December 31, and uses the accrual method of accounting to maintain its books and records.

Even though Taxpayer assumed that the necessary requirements to conduct business as an IC-DISC were satisfied, it did not qualify as an IC-DISC for federal income tax purposes because it did not timely file a Form 4876-A with the IRS within 90 days of Date 2. Taxpayer represents that it did not discover this error until Date 4, more than 90 days after Date 2.

After consulting with Advisors, Taxpayer took various ineffective actions between Date 5 and Date 6 in an effort to remedy its failure to timely file Form 4876-A. Because these actions were ineffective, Advisors, acting on Taxpayer's behalf, submitted this letter ruling request on Date 1.

The period of limitations on assessment under section 6501(a) has not expired for Taxpayer's taxable years for which the election is being made or any taxable years that would have been affected by the election had Taxpayer made a timely election. Taxpayer has requested a ruling that grants an extension of time to file Form 4876-A within 60 days from the issuance of a favorable ruling letter so that the form will be treated as timely filed within 90 days after the beginning of its first taxable year.

Law and Analysis

Section 992(b)(1)(A) provides that an election by a corporation to be treated as a DISC shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the

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Secretary may give his consent to the making of an election at such other times as he may designate.

Section 992(b)(1)(B) provides that such election shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on such first day of the first taxable year for which such election is effective consent to such election.

Temp. Treas. Reg. § 1.921-1T(b)(1) provides, in part, that a corporation electing IC-DISC status must file Form 4876-A. A corporation electing to be treated as an IC-DISC for its first taxable year shall make its election within 90 days after the beginning of that year. The rules contained in Treas. Reg. § 1.992-2(a)(1), (b)(1), and (b)(3) shall apply to the manner of making the election and the manner and form of representing shareholder consent to the election.

Treas. Reg. § 1.992-2(a)(1)(i) provides, in part, that the election to be treated as a domestic international sales corporation shall be valid only if the consent of every person who is a shareholder of the corporation as of the beginning of the first taxable year for which such election is effective is on or attached to the Form 4876-A when filed with the service center.

Treas. Reg. § 301.9100-1(c) provides, in part, that the Commissioner, in exercising the Commissioner's discretion, may grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) provides that a regulatory election is an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. For this purpose, an election includes an application for relief in respect of tax.

Treas. Reg. § 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 (automatic extensions) must be made under the rules of Treas. Reg. § 301.9100-3. Requests for relief subject to Treas. Reg. § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interest of the Government.

Taxpayer requests an extension of time to make a timely election described in Temp. Treas. Reg. § 1.921-1T(b)(1) for its first taxable year. This election is a regulatory election as defined in Treas. Reg. § 301.9100-1(b). Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an

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extension of time, provided that Taxpayer satisfies the standards for relief set forth in Treas. Reg. § 301.9100-3.

Based on the facts and representations submitted with Taxpayer's ruling request, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file Form 4876-A in accordance with Temp. Treas. Reg. § 1.921-1T(b)(1). Such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer's first taxable year beginning Date 2.

The granting of an extension in this ruling letter is not a determination that Taxpayer is otherwise eligible to make the election, to submit shareholder consent statements, or to claim IC-DISC status or benefits. See Treas. Reg. § 301.9100-1(a). A copy of this letter ruling should be filed with the Form 4876-A and shareholder consent statements.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that written determinations may not be used or cited as precedent. Except as expressly provided herein, this ruling neither expresses nor implies any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this ruling letter.

Pursuant to a power of attorney on file in this office, a copy of this ruling letter is being furnished to your authorized representatives.

Sincerely

John E. Hinding
Assistant to the Branch Chief, Branch 6
Office of Chief Counsel
(International)